No. 95-853

IN THE

Supreme Court of the United States

October Term, 1995

M.L.B.,

Petitioner,

v.

S.L.J., INDIVIDUALLY, AND AS NEXT FRIEND OF THE MINOR CHILDREN, S.L.J. AND M.L.J., AND HIS WIFE, J.P.J.,

Respondents.

On Writ of Certiorari To The Supreme Court of Mississippi

BRIEF FOR PETITIONER

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QUESTION PRESENTED

In a State that provides appeals as a matter of right from adverse lower court decisions terminating parental rights, may the State, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, condition those appeals upon a parent's ability to pay appeal fees in excess of two thousand dollars?

PARTIES

Initials were used to denote the parties in the Supreme Court of Mississippi, and are being used in this Court as well. The parties' full names are contained in the pleadings of the Chancery Court of Benton County, Mississippi. See Pet. App. 8.

Defendant/Counter-Plaintiff/Appellant: M.L.B.

Plaintiffs/Counter-Defendants/Appellees: S.L.J., individually and as next friend of his minor children, S.L.J. and M.L.J., and his wife, J.P.J.

The Defendant/Counter-Plaintiff/Appellant is the Petitioner here. Because this case involves a challenge to an existing practice of the Supreme Court of Mississippi, the Attorney General of Mississippi is appearing as a respondent in defense of the practice.

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BRIEF FOR PETITIONER

The petitioner, M.L.B., whose parental rights to her children were terminated by the Chancery Court of Benton County, Mississippi, seeks reversal of the decision of the Supreme Court of Mississippi, which refused to permit her appeal from the adverse termination decision because of her financial inability to pay to the Court appeal fees, including record preparation fees, in excess of two thousand dollars. This was done pursuant to the Mississippi Supreme Court's stated practice of automatically prohibiting in forma pauperis appeals in civil cases. See, *Moreno v. State*, 637 So. 2d 200 (Miss. 1994) (in forma pauperis appeals are not permitted in civil cases); *Nelson v. Bank of Mississippi*, 498 So.2d 365 (Miss. 1986) (same); *Life & Cas. Ins. Co. v. Walters*, 200 So. 732 (Miss. 1941) (same).

OPINIONS BELOW

The August 31, 1995 order of the Supreme Court of Mississippi dismissing the petitioner's appeal is unreported and is reproduced in the appendix to the petition for writ of certiorari, p. 1. The related August 18, 1995, July 10, 1995, and June 5, 1995 orders of the Supreme Court of Mississippi are unreported and are reproduced in Pet. App. 3, 4, and 6, respectively. The December 14, 1994 order of the Chancery Court of Benton County terminating the parental rights of petitioner is unreported and is reproduced at Pet. App. 8.[1]

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[1] This Court, on May 13, 1996, granted petitioner's motion to dispense with the filing of the joint appendix. The motion was based on the ground that all relevant materials are contained in the appendix to the petition for writ of certiorari.

JURISDICTION

The judgment of the Supreme Court of Mississippi dismissing the petitioner's appeal was issued on August 31, 1995. Pet. App. 1. The mandate of the Supreme Court of Mississippi, which is dated September 21, 1995, confirms that the date of the dismissal was August 31, 1995. Pet. App. 2. The petition for writ of certiorari was timely filed on November 29, 1995, and the writ was granted on April 1, 1996. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution, which reads in relevant part as follows:

> . . . . No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

After being married for nearly eight years, petitioner M.L.B. and respondent S.L.J. were divorced on June 9, 1992, with their two children remaining in the custody of S.L.J., their father. Less than three months later, on September 4, 1992, S.L.J. remarried, this time to respondent J.P.J. Just over one year later, on November 15, 1993, respondents S.L.J. and J.P.J. filed this case in the Chancery Court of Benton County, Mississippi, seeking to terminate the parental rights of petitioner M.L.B., who is the natural mother of the

children, and to have J.P.J. take her place by adopting the children. The complaint did not allege any sort of abuse by M.L.B. toward the children or any type of criminal conduct on her part, but instead contended that she had not maintained reasonable visitation and was in arrears on child support payments. M.L.B. responded with a counterclaim seeking primary custody of the children and contending that S.L.J. had not permitted her reasonable visitation with her children, despite his agreement to do so as part of the initial divorce decree.

Under Mississippi law, a person's parental rights cannot be terminated absent clear and convincing evidence that the parent either abandoned or abused the child or is so unfit as to warrant termination. Miss. Code Ann., §§ 93-15-103, 93-15-109. Despite this high burden of proof, the Chancery Judge, after three days of trial, issued an order effective December 12, 1994, entered nunc pro tunc on December 14, 1994, terminating the parental rights of petitioner M.L.B. and in her stead allowing J.P.J. to adopt the children. Pet. App. 8. In the order, the Chancellor cited no specific grounds for the termination and, despite a vigorously contested trial, cited no specific evidence relating to or supporting his decision. Instead, he simply issued a conclusory statement repeating word for word the statutory language of Miss. Code § 93-15-103(3)(e). Pet. App. 9-10. At the time of the termination, M.L.B.'s children were nine and seven years old. *Id.* at 9.

In Mississippi, an appeal of right can be taken from all lower court final judgments in parental termination cases, as well as in other civil cases. Miss. Code § 11-51-3. The appeal is to be filed initially with the State Supreme Court, which determines after briefing whether to retain the case for decision or send it to the intermediate Mississippi Court of Appeals. Rules 16, 17, Mississippi Rules of Appellate Procedure.

Petitioner M.L.B. filed a timely notice of appeal to the Mississippi Supreme Court on January 11, 1995. Pet. App. 13. The Clerk of the Chancery Court then estimated the cost of preparing and transmitting the record to be $2,352.36, which included $1,900.00 for the transcript (950 pages at $2.00 per page), $438.00 for the other papers in the record (219 pages at $2.00 per page), $4.36 for binders, and $10.00 for mailing. Pet. App. 15. Although the petitioner had paid the $100 filing fee for the appeal, she could not afford to pay these remaining fees.

Under Mississippi law, the advance payment of these charges is a prerequisite to proceeding with an appeal. Rule 11(b)(1), M.R.A.P., requires the petitioner to pay in advance for the transcript as well as other necessary portions of the record. The per page costs of the transcript and the papers from the record are set by statute. Miss. Code §§ 25-7-1, 25-7-13(6). Rule 10(b)(2), M.R.A.P., requires a transcript to be prepared if the appellant "intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence." In this case, the primary error that the petitioner intended to urge on appeal was that the Chancery Court's decision terminating her parental rights was unsupported by, and contrary to, the evidence presented.[2]

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[2] Rule 10(c), M.R.A.P., provides a procedure for preparing the record "[i]f no stenographic report or transcript . . . is available," but this procedure applies only if the court reporter's notes are lost or stolen or if the court reporter failed to transcribe an important portion of any trial or hearing. Luther T. Munford, Mississippi Appellate Practice, § 7.6 (1995). Rule 10(d), M.R.A.P., permits parties to an appeal to forego the transcript if they can agree on a written "statement of the case . . . setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented," but that was simply not an option in the present case, which involved a protracted and hotly contested evidentiary battle.

On July 10, 1995, the Mississippi Supreme Court issued an order requiring the petitioner, within fourteen days, to comply with certain prerequisites before the appeal could proceed. Pet. App. 4. The petitioner met all of these requirements except that of paying the $2,352.36 in appeal costs. Instead, on July 24, 1995 -- fourteen days after the Court's July 10 order -- she filed in the Chancery Court of Benton County a motion for leave to appeal in forma pauperis. Pet. App. 17. Attached to that motion was an affidavit of indigency showing that her limited financial means rendered her unable to pay the appeal costs. On July 27, 1995, she filed in the Supreme Court of Mississippi a motion to suspend rules, for leave to appeal in forma pauperis, and to brief the issue of in forma pauperis appeals. Pet. App. 19.

These two motions raised the federal constitutional issues that are now being presented to this Court. The July 24 Chancery Court motion, which was attached to and incorporated in the July 27 Mississippi Supreme Court motion, noted the Mississippi Supreme Court precedent stating that in forma pauperis appeals are prohibited in civil cases. Pet. App. 17-18, *citing, Nelson v. Bank of Mississippi*, 498 So.2d 365 (Miss. 1986); *Life & Cas. Ins. Co. v. Walters*, 200 So. 732 (Miss. 1941). However, the motion contended that the failure to permit the appeal because of the inability to pay the appeal costs, coming in a case involving the termination of the fundamental rights of a parent, would violate both the State and Federal Constitutions. More specifically, the motion stated:

> [W]here the State's judicial processes are invoked to secure so severe an alteration of a litigant's fundamental rights -- the termination of the parental relationship with one's natural child -- basic notions of fairness, justice, of

> equal protection under the law, and of substantive and procedural due process, protections guaranteed by this State's Constitution and the Constitution of the United States, require that a person be afforded the right of appellate review though one is unable to pay the costs of such review in advance.

Pet. App. 18.

The July 27 Supreme Court motion incorporated the July 24 Chancery Court motion, and added that the termination of parental rights "implicates a fundamental interest protected both by the Fourteenth Amendment to the U.S. Constitution and Article 3, Section 14 of the Mississippi Constitution." Pet. App. 20. It further stated:

> The denial because of the indigency of the appellant of the right to review in a case involving such a . . . fundamental interest . . . appears to be a violation of the requirement of due process and a denial of equal protection under the law. . . .

Id., citing, Santosky v. Kramer, 455 U.S. 745, 758-759 (1982), and *Lassiter v. Department of Social Services*, 452 U.S. 18, 27 (1981). Accordingly, the federal issues were properly raised by these two motions in the Mississippi courts, one of which was filed in the Chancery Court and both of which were filed in the Mississippi Supreme Court. *See, Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 159 n.5 (1980).

On August 18, 1995, the Supreme Court of Mississippi issued an order denying the motion to suspend rules, for leave to appeal in forma pauperis, and to brief the issue of in forma pauperis appeals. The Court's sole basis for denying the motion was the following:

> The appellant claims he [sic] is unable to pay the costs of appeal and that the Court should suspend the rules and allow the appellant to proceed in forma pauperis. The motion asks permission to brief the issue of in forma pauperis appeals. The right to proceed in forma pauperis in civil cases exists only at the trial level. *Moreno v. State*, 637 So. 2d 200 (Miss. 1994). *See also Nelson v. Bank of Mississippi*, 498 So.2d 365 (Miss. 1986); *Life and Casualty Ins. Co. v. Walters*, 190 Miss. 761, 772-74, 200 So. 732, 733-34 (1941). The Court finds that the motion should be denied.

Pet. App. 3. On August 31, 1995, the Supreme Court of Mississippi ordered the appeal finally dismissed. Pet. App. 1-2. The petitioner then filed her petition for writ of certiorari and on April 1, 1996, this Court granted the writ.[3]

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[3] Throughout this litigation, the petitioner has been represented by pro bono counsel. Danny Lampley originally began representing the petitioner when he was a staff attorney for North Mississippi Rural Legal Services (NMRLS). Because of the petitioner's poverty, she was eligible for representation by that organization. After Mr. Lampley left NMRLS for private practice during the course of the Chancery Court proceedings, he retained the case pro bono because NMRLS did not have a sufficient number of attorneys for someone else to take over the case. Although Mr. Lampley later asked NMRLS to pay the appeal costs, and although Rule 1.8(e)(2) of the Mississippi Rules of Professional Conduct permitted NMRLS to do so, it did not because of constraints on its own budget. This is denoted in the record, in Exhibit B to the modified motion for leave to withdraw from representation, which was filed in the Mississippi Supreme Court so that NMRLS could withdraw after having determined that it was not in a position to carry the appeal financially. The Mississippi Supreme Court permitted NMRLS to withdraw from the case. Pet. App. 6. Because of the importance of the constitutional issue in this case, the American Civil Liberties Union Foundation and the American Civil Liberties Union of Mississippi are paying for the out-of-pocket expenses incurred in presenting the case to this Court.

SUMMARY OF ARGUMENT

One of the most fundamental rights that can be adjudicated in a court of law is the right inherent in a parent's relationship with his or her child. With a level of care that is appropriate given the stakes involved, Mississippi law provides not for an unreviewable decision by a single judge in parental termination cases, but for a two-tiered process of judicial decisionmaking. The initial decision is made by a single Chancery Court Judge, elected by the voters and sitting without a jury, but there is a right of appeal for those parents who are aggrieved by that decision and who wish it reviewed by an appellate court. Just as Mississippi could not, consistent with the Fourteenth Amendment, limit that appeal to those whose financial income exceeds some specific amount, it cannot limit it to those who can pay over $2000 in advance, while denying it to those who cannot. Unfortunately, the Mississippi Supreme Court has done that in this case. Whatever the constitutional propriety of that sort of practice in other types of civil cases, its imposition in this case -- involving the termination of the fundamental rights encompassed by the relationship between a parent and her child -- is clearly unconstitutional.

A significant line of precedent from this Court has applied the Fourteenth Amendment to protect the rights of citizens, no matter their financial condition, to pursue fundamental legal interests through existing avenues in state judicial systems. This initially was developed in the context of criminal appeals, beginning with *Griffin v. Illinois*, 351 U.S. 12 (1956), which held that a citizen could not be precluded from an appeal available to others simply because he or she could not afford to pay for a transcript of the trial. This line of precedent has since included not only felony cases such as *Griffin*, but also misdemeanor appeals such as that in *Mayer v. City of Chicago*, 404 U.S. 193 (1971), which

held that a transcript must be provided for an indigent defendant appealing a conviction punished by a $500 fine with no jail time. The rationale of these precedents also has been applied by this Court in a civil case, *Boddie v. Connecticut*, 401 U.S. 371 (1971), where fundamental rights were at issue, and has played a part in this Court's resolution of a civil appeal involving the interests of impoverished appellants. *Lindsey v. Normet*, 405 U.S. 56 (1972). In a separate line of precedent, this Court has held that fundamental rights are implicated when a parent's relationship with his or her children is threatened through a state court parental termination proceeding. *Lassiter v. Department of Social Services*, 452 U.S. 18, 24 (1981); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

The existing avenues in Mississippi's judicial system include the right of appeal in parental termination cases, but a transcript is required if a parent wishes -- as does the petitioner -- to challenge the termination on evidentiary grounds. If the petitioner could afford the appeal, including the transcript, it certainly would be a meaningful appeal. The Mississippi Supreme Court carefully reviews the findings in termination cases and has reversed a fairly high percentage of the termination decisions it has reviewed in reported cases. The present case is a perfect example of the importance of this sort of review in Mississippi. The complaint did not allege any sort of abuse or criminal conduct by the petitioner and the evidence was subject to serious dispute. Yet the Chancery Judge's written opinion did not discuss or cite any of the evidence and did not give any reasons, other than reciting the statutory language, for the termination. Just as the appeal of right in Mississippi represents the best and last hope for wealthier parents whose parental rights have been terminated, the appeal would be the best and last hope for people like the petitioner, if only they had access to it.

Given the fundamental nature of parental rights, and given that Mississippi law authorizes an appeal from decisions of a Chancery Court judge in termination cases, it violates both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment to open this appeal only to those who have sufficient wealth to pay the amounts that were charged here, while closing it to those who do not. By requiring over $2000 in advance for the appeal in this case and by refusing to consider the petitioner's contention that she cannot pay it, the Mississippi Supreme Court has acted in disregard of these principles.

While the interest of a parent in the relationship with his or her child is one of the most important that can be adjudicated in a court of law -- certainly more important than the interest involved in the misdemeanor cases in which this Court has required that poor people be granted access to existing appeals and given trial transcripts where necessary -- the State's pecuniary interest in saving money by not permitting these appeals is negligible. The number of parental termination appeals in Mississippi is rather small, particularly when compared to the large number of in forma pauperis felony and misdemeanor appeals in the State. There will be little financial burden on the State if those who cannot now afford it are allowed to appeal parental terminations along with those who can. Moreover, a ruling in the petitioner's favor by this Court will not open the floodgates to demands on state treasuries from impecunious appellants in other types of civil cases. There are few interests arising in civil litigation more important than the interest implicated in parental termination cases, and the petitioner can prevail here based on the importance of that interest without the need for any broad holding that in forma pauperis appeals are constitutionally required in all civil cases.

Thus, the Mississippi Supreme Court's decision is not

supported by an interest sufficient to justify the refusal to consider in forma pauperis appeals in parental termination cases such as this one.

ARGUMENT

In the realm of human relationships, among the most important is that between a parent and a child. The bonds between parents and children are at the center of our individual lives and our life as a culture.

However, as part of the protection of children from egregiously harmful situatations, the State has the power to terminate, through the operation of the law, the relationship between a parent and a child against the parent's wishes. This termination of parental rights is something that goes far beyond the legal determination of the proper physical custody of a child, which can occur if there is the breakdown of a family or the dissolution of a marriage. For even when custody exists in one parent or the other after a divorce, the remaining parent can still play a role in the child's life, can still see the child, and can still be with the child for significant periods of time, even if they are not living together on a constant basis. But when a State, operating through its court system and its judges, terminates parental rights, it completely dissolves the relationship between a parent and a child.

This is true not only as a legal matter, but also as a practical matter. A termination of parental rights deprives a parent of any right to see his or her child or to play any role in the child's life. It can mean that a father is no longer a father, or as in this case, a mother is no longer a mother. She is no longer a mother in the eyes of the law, and is no longer a mother in the day to day passage of life.

This ability to terminate a relationship between a parent and a child encompasses an awesome power and entails a correspondingly significant responsibility. There are legitimate reasons, of course, for this power, but only if it is exercised carefully. As part of the exercise of this power, the State of Mississippi has chosen to have the issue of the termination of parental rights presented in the first instance in any given case to a single trial court judge -- a Chancery Court judge -- who is elected by the voters and who sits without a jury. But with a level of care appropriate to the magnitude of the decision, the process in Mississippi does not end with this single judge's decision. Like other states, Mississippi provides an appeal of right for those parents who wish to pursue it, so that appellate judges can review the trial judge's initial determination and reverse the decision if they conclude it is appropriate to do so.

Unfortunately, in this case, a parent has been excluded from a key component of this system because she does not have enough money. Her parental rights have been taken away by a single judge whose decision, she believes, is grievously wrong as a matter of fact and law, but because she cannot afford the price that is being charged, she is not allowed to present her case to the appellate judges who otherwise would hear it and who could restore her rights as a parent to her children.

Certainly, in administering its two-tiered system of judicial decision-making in a case involving such fundamental rights, Mississippi could not, consistent with the principles of the Fourteenth Amendment, limit the right of appeal to, for instance, parents who possess assets worth over $200,000, or whose annual income exceeds over $50,000 a year, and leave everyone else to the reason, the mercy, or the whim of a single trial judge. By excluding the petitioner from her appeal, and refusing even to consider her contention that she

cannot afford the $2,000 plus price that the State court system is charging for the appeal, the Mississippi Supreme Court is doing much the same thing. In view of the fundamental right at issue in this case, the Mississippi Supreme Court's decision should be reversed.

The first section of the remainder of this argument reviews the relevant precedents of this Court. The second section discusses the Mississippi system of appellate review in parental termination cases and the impact it could have on this case if only the petitioner were allowed the same access to it that others have. The third section returns to this Court's precedents and demonstrates how the principles of the Fourteenth Amendment, as explicated by this Court over the years, are violated by the decision of the Mississippi Supreme Court in this case.

I. IN CASES INVOLVING FUNDAMENTAL RIGHTS, THIS COURT'S PRECEDENTS PROHIBIT A STATE FROM DENYING ITS CITIZENS ACCESS TO EXISTING AVENUES IN A COURT SYSTEM SIMPLY BECAUSE THEY ARE POOR.

In a significant line of cases, this Court consistently has protected the right of citizens, no matter their financial station, to pursue fundamental legal interests through existing avenues in state judicial systems. In *Griffin v. Illinois*, 351 U.S. 12 (1956), the Court noted that a state is not required by the Constitution to provide an appeal in a criminal case. But where a state does so, the Court held, it also must provide indigent persons a transcript, or its equivalent, at state expense so they can take advantage of the appeal option irrespective of their financial poverty. This result, said the plurality opinion in *Griffin*, is compelled by the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Id.* at 18-20. As stated by the plurality opinion:

> There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance.

Id. at 18. The four-justice plurality in *Griffin* was joined in the result by Justice Frankfurter, who said in his concurrence:

> [W]hen a State deems it wise and just that convictions be susceptible to review by an appellate court, it cannot by force of its exactions draw a line which precludes convicted indigent persons . . . from securing such a review . . . .
>
> . . . . If [a State] has a general policy of allowing criminal appeals, it cannot make lack of means an effective bar to the exercise of this opportunity.

Id. at 23-24 (Frankfurter, J., concurring).

In cases after *Griffin*, a majority of this Court has reaffirmed *Griffin* and held that its reasoning is predicated both on the Due Process and the Equal Protection Clauses. *See, Mayer v. City of Chicago*, 404 U.S. 189, 193 (1971); *Evitts v. Lucey*, 469 U.S. 387, 403-405 (1985). Moreover, in several cases decided in the wake of *Griffin*, this Court has invalidated a number of state practices and statutes that denied indigent criminal defendants access to effective appeals because of their inability to pay for transcripts. Among these is *Mayer*, which held that an indigent had the right to provision of a transcript for appeal in a case where he was faced not with imprisonment, but merely with a $500 total fine for two misdemeanor offenses.

Fifteen years after *Griffin*, this Court's decision in *Boddie*

v. Connecticut, 401 U.S. 371 (1971), extended much of the rationale of *Griffin* to civil cases involving fundamental rights. *Boddie* held that the Fourteenth Amendment does not permit a $60 court costs fee to be imposed, as a condition for filing a civil court divorce petition, upon those who cannot afford it. As Justice Harlan's opinion for the Court in *Boddie* explained: "In *Griffin* it was the requirement of a transcript beyond the means of the indigent that blocked access to the judicial process." 401 U.S. at 382. Connecticut's $60 divorce filing fee does the same thing, said the Court in *Boddie*, adding that "the rationale of *Griffin* covers this case." 401 U.S. at 382. While *Griffin* was predicated both upon the Due Process and Equal Protection Clauses, *Boddie* specifically relied upon the Due Process Clause, holding that it is violated by the application to indigents of a monetary fee that prevents them from access to the courts in a matter involving a fundamental interest such as marriage:

> [G]iven the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship, due process does prohibit a state from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.

401 U.S. at 374. The Court in *Boddie* also explained that its decision was premised on the fact that resort to the courts was the only means by which people could seek lawful dissolution of their marriages. *Id.* at 376-377.

While *Boddie* extended *Griffin*'s rationale to civil cases involving fundamental rights, this Court's decision in *Lindsey v. Normet*, 405 U.S. 56 (1972), made it clear that the relevant principles from *Griffin* encompass not only civil cases at the trial level, but also those on appeal. *Lindsey* struck down, as

violative of the Equal Protection Clause, an Oregon statutory provision requiring a double appeal bond for tenants who appeal eviction cases. Although *Lindsey* did not involve a transcript fee, as did *Griffin* and as does the present case, this Court's decision in *Lindsey* cited *Griffin* in support of the principle that "[w]hen an appeal is afforded . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." *Id.* at 77, *citing Griffin*, 351 U.S. at 18. In declaring the Oregon statute unconstitutional, this Court emphasized its impact on poor people:

> The discrimination against the poor, who can pay their rent pending an appeal but cannot post the double bond, is particularly obvious. For them, as a practical matter, appeal is foreclosed, no matter how meritorious their case may be.

Lindsey, 405 U.S. at 79.

Lindsey also made it clear, as have other cases from this Court, *see, Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71 (1988), that sufficient state action exists to review state appellate procedures under the Fourteenth Amendment even where the only litigants in the case are private litigants.

As previously noted, *Boddie* struck down a $60 divorce filing fee under the Due Process Clause in light of the fact that marriage and divorce implicate a fundamental interest for constitutional purposes. This Court's decisions in *United States v. Kras*, 409 U.S. 434 (1973) and *Ortwein v. Schwab*, 410 U.S. 656 (1973), upheld smaller filing fees where no fundamental rights were involved. *Kras* dealt with a $50 filing fee for a bankruptcy case, which could be paid in installments of as little as $1.28 per week, 409 U.S. at 449, and *Ortwein* involved a $25 filing fee for judicial review of

an administrative reduction in old-age assistance. 410 U.S. at 658. In both cases, the Court specifically relied upon its conclusion that the interests involved were not of the same constitutional magnitude as the marriage interest implicated in *Boddie*. *Kras*, 409 U.S. at 445; *Ortwein*, 410 U.S. at 659.

By contrast, this Court in *Lassiter v. Department of Social Services*, 452 U.S. 18, 24 (1981), held that a parent's interest in resisting a termination of parental rights is a "commanding" one, and this Court's decision in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), described the interest of "persons faced with forced dissolution of their parental rights" as a "fundamental liberty interest."

In *Lassiter*, this Court concluded that due process does not require appointed counsel for indigent parents in every case involving a potential termination of parental rights. However, said the Court, in light of the importance of the interest, there will be some parental termination cases in which due process will require the appointment of counsel. *Id.* at 31-32. Accordingly, the Court held that state courts must provide, at the very least, a case-by-case determination as to "whether due process calls for the appointment of counsel for indigent parents in termination proceedings," with the question "to be answered in the first instance by the trial court, subject, of course, to appellate review." *Id.* at 32. Four dissenting Justices contended that due process requires the appointment of counsel in all such cases.

In summary, then, *Griffin* and its progeny held that the Due Process and Equal Protection Clauses are violated when access is precluded to state court criminal appeals, even in misdemeanors with no prison terms, because an indigent person cannot afford a transcript. *Boddie* applied that rationale under the Due Process Clause to filing fees in civil cases involving fundamental rights at the trial level, and

Lindsey suggested that a similar rationale applies as part of the Equal Protection Clause in civil appeals. While *Kras* and *Ortwein* concluded that the rationale does not control with respect to small filing fees in cases where no fundamental rights are involved, *Lassiter* and *Santosky* held that the termination of a parent's relationship with his or her child clearly implicates fundamental rights.

II. UNDER THE MISSISSIPPI SUPREME COURT'S RULING, THE PETITIONER IS PRECLUDED FROM AN APPEAL THAT OTHERWISE COULD RESULT IN THE RESTORATION OF HER RIGHTS AS A PARENT TO HER CHILDREN.

The Mississippi Rules of Appellate Procedure require a transcript in any case where the appellant "intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence." Rule 10(b)(2), M.R.A.P. The importance of that rule is illustrated by the present case, where the Chancellor's order cited *no evidence* and gave *no reasons*, other than repeating the statutory language, for the drastic measure of terminating the petitioner's lawful relationship with her children. Pet. App. 8. Thus, a transcript not only is required by the rules, but is necessary for the appellate court, first, to attempt to discern the reasons for the Chancellor's ruling, and second, to see if there was sufficient evidence to support that ruling.[4]

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[4] As mentioned in n. 2 of this brief, the Mississippi Rules of Appellate Procedure permit no practical and effective alternative to the requirement of obtaining a transcript. In the context of criminal cases, this Court has stated: "[a] defendant who claims the right to a free transcript does not, under our cases, bear the burden of proving inadequate any alternatives as may be suggested by the State or conjured up by a court in hindsight." *Britt v. North Carolina*, 404 U.S. 226, 230 (1971). *See also, Mayer v. City of Chicago*, 404 U.S. at 189, 190, 195, 198 (where a criminal defendant appealed on sufficiency of evidence grounds, he "ma[d]e out a colorable need for a complete transcript" and had a right to it "where . . . necessary to assure . . . as effective an appeal as would be available to the defendant with resources to pay his own way.".

Consistent with its uniform practice and its precedent going back many years, the Mississippi Supreme Court refused even to consider the petitioner's claim that she could not afford to pay, in advance, over $2,000 for the statutory costs of the transcript and the other papers constituting the record in this case. The Court did this irrespective of the fact that this case, unlike many other civil cases, involves one of the most fundamental interests that can arise in the law -- the interest of a parent in her relationship with her natural child.

The denial of the petitioner's right to appeal under Mississippi law has prevented her from pursuing an avenue that may well lead to the restoration of her rights as a parent to her children. Mississippi grants an appeal of right in cases like this, and the Mississippi Supreme Court has insisted that the appeal play an integral role in insuring that parental rights are not wrongfully terminated. Consistent with this Court's ruling in *Santosky*, Mississippi has, by statute, adopted the clear and convincing standard of proof before any termination can be ordered. Miss. Code Ann. § 93-15-109. The Mississippi Supreme Court has enforced that standard through detailed appellate review of the evidence, as is clear from the that Court's discussion of the standard in parental termination cases: "This Court has not been reluctant to reverse the lower court when the required burden of proof has not been met." *Vance v. Lincoln County DPW*, 582 So.2d 414, 417 (Miss. 1991).

The Mississippi Supreme Court's searching review has been exemplified in a number of cases, including *Petit v. Holifield*, 443 So.2d 874 (Miss. 1984), where the Court discussed the proof regarding the natural father, who was the

defendant in that case:

> [He] does . . . come close [to meeting the clear and convincing standard] and is 'teetering' on the brink . . . . [If] circumstances continue without improvement over a substantial period of time in the future [his parental rights should be terminated]. . . . He is hardly an ideal parent.

Id. at 878-879. Despite the parental deficiencies of the natural father, the Mississippi Supreme Court in *Petit* reversed the Chancery Judge's finding of clear and convincing evidence, holding that the proof -- while close -- did not meet the required standard.

Indeed, from 1980 to the present, there have been sixteen reported Mississippi Supreme Court cases citing the termination statute, Miss. Code § 93-15-103.[5] Twelve of those sixteen cases involved Supreme Court affirmance or reversal, on the merits, of the grant or denial of termination. Eight of those twelve reviewed trial court termination orders and the other four reviewed trial court denials of termination. Of the eight termination orders reviewed by the Court, three were reversed for a failure to meet the evidentiary standard, *Petit v. Holifield*, 443 So.2d 874 (Miss. 1984); *De La Oliva v. Lowndes County Dept. of Public Welfare*, 423 So.2d 1328 (Miss. 1982); *In Re Adoption of a Female Child*, 412 So.2d 1175 (Miss. 1982), while five were affirmed. *Natural Mother v. Paternal Aunt*, 583 So.2d 614 (Miss. 1991); *Vance v.*

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[5] At the beginning of 1995, Mississippi began utilizing an intermediate Court of Appeals, but appeals still lie to the Supreme Court, which determines whether to keep the cases or send them to the Court of Appeals. See Rules 16-17, M.R.A.P. Court of Appeals opinions are not published. See, *Supreme Court of Mississippi, 1995 Annual Report*, pp. 29, 41.

Lincoln County Dept. of Public Welfare, 582 So.2d 414 (Miss. 1991); *Carson v. Natchez Children's Home*, 580 So.2d 1248 (Miss. 1991); *G.M.R., Sr. v. H.E.S.*, 489 So.2d 498 (Miss. 1986); *Doe v. Attorney W.*, 410 So.2d 1312 (Miss. 1982). Of the four denial orders that were reviewed, two were reversed, *Adams v. Powe*, 469 So.2d 76 (Miss. 1985); *Ainsworth v. Natural Father*, 414 So.2d 417 (Miss. 1982), and two were affirmed. *In the Interest of J.D.*, 512 So.2d 684 (Miss. 1987); *Bryant v. Cameron*, 473 So.2d 174 (Miss. 1985).

These cases demonstrate that, in Mississippi, the appeal from a termination of parental rights is not simply a formality, but instead is a meaningful opportunity for a parent to challenge an adverse lower court decision. The importance of this sort of review in Mississippi is illustrated by the present case, where the complaint alleged no abuse or criminal conduct, but only a failure of the petitioner to maintain constant visitation and support payments; where the petitioner contested this and presented evidence to the effect that the respondent refused to permit reasonable visitation; where there is a question as to whether a lapse in visitation and child support payments for a short period of time, even if true, would be sufficient grounds for termination; and where the Chancery Court's termination order contained no discussion of the evidence and no specific factual findings to support the termination. Pet. App. 8. Those who are financially able in Mississippi can raise these sorts of issues, as well as others, in a parental termination appeal and can obtain a meaningful review of a chancery judge's decision. If the petitioner were allowed in the same appellate courthouse door, she could do the same and the appeal would be her best and last hope to retain her rights as a parent to her children.

III. BY REFUSING TO CONSIDER THE PETITIONER'S CLAIM THAT SHE CANNOT AFFORD TO PAY OVER $2000 AS A PREREQUISITE TO APPEALING THE TERMINATION OF HER PARENTAL RIGHTS, THE SUPREME COURT OF MISSISSIPPI HAS ACTED IN DISREGARD OF THE PRINCIPLES OF THE FOURTEENTH AMENDMENT, AND ITS JUDGMENT SHOULD BE REVERSED.

Given that the rights of a parent in the relationship with a child are among the most important and sacred in our world, and given that Mississippi permits an appeal from decisions of a single judge terminating those rights, the State cannot, consistent with the Fourteenth Amendment, effectuate that appeal only for those who are financially comfortable while closing it to those who are poor. By requiring the petitioner to pay over $2,000 in advance, and by refusing even to consider her claim that she cannot afford this, the Mississippi Supreme Court has run afoul of the principles of due process and equal protection of the law.

This, of course, is the lesson of *Griffin v. Illinois*. While *Griffin* involved a criminal case, its teaching is not limited to criminal cases. This is clear both from *Boddie* at the civil trial court level and *Lindsey* at the civil appeal level. Moreover, it would make absolutely no sense to say that the *Griffin* holding can never be applied in a civil case. The present case is a civil matter, yet the interest of the petitioner -- the interest of a parent in the natural and lawful relationship with her child -- is one of the most important that can be adjudicated in a court of law. This interest is at least equivalent to the marriage relationship in *Boddie*, may well be as important as the interest in physical liberty implicated by *Griffin*, and is far more important than the monetary fine and misdemeanor conviction involved in *Mayer v.*

Chicago.

Indeed, it would be quite absurd to conclude that the petitioner in *Mayer* had a right under the Fourteenth Amendment to a transcript irrespective of his poverty so he could appeal his $500 fine, but that the petitioner in the present case has no right to appeal the termination of her natural and lawful relationship with her children because she cannot pay over $2,000 in advance of the appeal.

A comparison of the interests of the petitioner and those of the government of Mississippi confirms that the Mississippi Supreme Court's action in this case violates the Fourteenth Amendment. As this Court stated in *Lassiter*, the petitioner's interest here is a "commanding" one, 452 U.S. at 24, and as this Court said in *Santosky*, it is a "*fundamental* liberty interest." 455 U.S. at 753 (emphasis added). In *Santosky*, the Court noted that juvenile delinquency, civil commitment, deportation, and denaturalization cases can involve losses of individual liberty, but they are, at least to a degree, reversible actions. A termination of parental rights is different, said the Court:

> Once affirmed on appeal, a . . . decision terminating parental rights is *final* and irrevocable. *Few forms of state action are both so severe and so irreversible.*

Id. at 759 (first emphasis in original; second emphasis added; citation omitted). Justice Stevens pointed out the following in his dissent in *Lassiter*:

> A woman's misconduct may cause the State to take formal steps to deprive her of her liberty. The State may incarcerate her for a fixed term and also may permanently deprive her of her freedom to associate with her child. . . . Although both deprivations are serious,

> often the deprivation of parental rights will be the more grievous of the two.

452 U.S. at 59 (Stevens, J., dissenting).

As is clear from the Mississippi Supreme Court's careful review of parental termination cases, the appeal is a means of insuring accurate determinations in these important matters -- an interest shared by the State and the petitioner. Indeed, this Court has highlighted the role that appellate review plays in promoting accurancy and preventing erroneous decisions in termination cases. *See, Lassiter*, 452 U.S. at 28-29 (stating that appellate review is one of the means by which North Carolina attempts to achieve accurate decisions in parental termination cases); *Santosky*, 455 U.S. at 776 n. 4 (Rehnquist, J., dissenting) (noting the "error reducing power of procedural protections such as . . . appellate review" in parental termination cases). Unfortunately, the Mississippi Supreme Court's judgment in the present case promotes accuracy only for those who can afford to pay a fairly substantial amount of money, but not for those who cannot.

Beyond the interest in accuracy that is promoted by an appeal, *Lassiter* emphasizes that appellate review is an important component in enforcing the due process rights of an indigent parent -- an interest that should be important not only to the petitioner, but to the State. *Lassiter* held that because of the crucial nature of the parental interest, states must, at the very least, conduct a case-by-case analysis to determine "whether due process calls for the appointment of counsel for indigent parents in termination proceedings," with the question "to be answered in the first instance by the trial court, *subject, of course, to appellate review.*" 452 U.S. at 32 (emphasis added). By not allowing appellate review for indigents in termination cases, the Mississippi Supreme Court's policy contravenes the protection of due process

contemplated by *Lassiter*.

The only conceivable interest the government of Mississippi might have in refusing to consider in forma pauperis motions in appeals like this is a financial one. But a reversal in this case is not going to have a significant impact on the state treasury. This case raises only the issue of whether the State Supreme Court can require, in advance, payment of the kind of money involved here as a condition of appealing a termination of parental rights, while at the same time refusing even to consider an appellant's claim that she cannot afford to pay the bill.

As noted in the previous section of this brief, there are only sixteen reported appeals in Mississippi since 1980 citing the State's termination statute, and only twelve of those involved the grant or denial of parental rights. Perhaps there were other appeals, including those that are unreported and those that are reported but did not cite the statute. Even so, the dearth of reported cases is an indication that the overall number of parental termination appeals is not very large. The Mississippi Supreme Court does not release statistics on the number of parental termination appeals, but it does issue an annual report breaking down decisions by subject matter for each year. Although the report does not list a category for parental termination appeals, it apparently includes those within the category of custody cases. In 1995, the State Supreme Court issued only ten decisions in custody appeals, while the intermediate Court of Appeals issued just six. *Supreme Court of Mississippi, 1995 Annual Report*, pp. 23, 42. Parental termination appeals are only a small percentage of the custody appeals inasmuch as terminations are more drastic and less frequent than disputes over custody. In light of all of this, it seems that only a modest number of termination appeals are filed in Mississippi, and the financial impact will be minimal even if people who cannot afford the

fees and costs are now allowed to join those who can. Compared to the resources involved in providing transcripts and record preparation for indigents in the criminal felony and misdemeanor realm, the price for allowing access in parental termination cases will be negligible.

Many of the states in the Union specifically provide for in forma pauperis appeals, including transcripts, in *all* types of civil cases,[6] and several others specifically provide for them in parental termination cases,[7] and they do so without any sort of financial chaos. Indeed, the Mississippi Supreme Court is the only court among the 50 states to take the position that in forma pauperis appeals will not be allowed or

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[6] *See, e.g.*, Alaska R. App. Proc. 209(a); Ariz. Superior Ct. R. App. Proc. --Civ. 24; Cal. Govt. Code §68511.3(a)(3); Cal. R. Ct. 985, 985(i)(9); D.C. Code. §15-712(a); D.C. Ct. App. R. 23; Idaho Stat. §31-3220(1); Ky. Rev. Stat. § 453.190(1); La. Code of Civ. Proc. Arts. 5181(A), 5185(A)(1); Maine R. Civ. Proc. 91(f); Mass. R. App. Proc. 12(a); Mass. Laws Ch. 261, §§ 27A-27F; Minn. Stat. §563.01; *State ex rel. Steinmeyer v. Coburn*, 671 S.W.2d 366 (Mo. App. 1984); *State ex rel. LaRue v. Hitchcock*, 153 S.W. 546 (Mo. 1913); Neb. Rev. Stat. §§ 25-2301, 25-2306; Nev. R. App. Proc. 24; Nev. Rev. Stat. § 12.015; N.M. R. App. Proc. 12-304B(2); N.M. Stat. § 39-3-12; N.Y. Civ. Prac. Law and Rules §§1101, 1102; N.D. R. App. Proc. R. 12(a); Or. Rev. Stat. § 21.605; Penn. R. App. Proc. 551, 552; *Morrison v. Miller*, 579 A.2d 976 (Penn. 1990); R.I. S. Ct. R. 5(b); *Kelly v. Kalian*, 442 A.2d 890 (R.I. 1982); *In Re Shannon*, 308 A.2d 484 (R.I. 1973); *Ex Parte Cauthen*, 354 S.E.2d 381 (S.C. 1987); Tex. R. App. Proc. 40, 53(j)(1); Wash. R. App. Proc. 15.2; *In Re Grove*, 897 P.2d 1252 (Wash. 1995); W.V. Code § 59-2-1.

[7] *See e.g.*, Conn. R. App. Proc. § 4017; *State v. Anonymous*, 425 A.2d 939 (Conn. 1979); Kan. S. Ct. R. 2.04.; Kan. Stat. §§ 38-1125, 38-1593, 38-1685; Mich. R. Ct. 2.002, 5.974(H)(3), 7.219, 7.319; *Reist v. Bay County Circuit Judge*, 241 N.W.2d 55 (Mich. 1976); N.H. S. Ct. R. 48; N.J. R. App. Prac. 2:7-1, 2:7-4; *In Re Gaurdianship of Dotson*, 367 A.2d 1160 (N.J. 1976); Wisc. Code § 814.29; *State ex rel. Girouard v. Circuit Court*, 454 N.W. 2d 792 (Wisc. 1990).

even considered in civil cases. Certainly, Mississippi can absorb any financial consequences involved in allowing poor people access to the appellate avenue that is open to those who are wealthier in parental termination cases. Furthermore, a decision for the petitioner by this Court will not necessarily require the waiver of fees and costs for impoverished appellants across the board in all types of civil appeals. Few interests are as important as those that arise in parental termination cases, and a holding affecting parental termination appeals would not necessarily apply to civil appeals involving interests of a lesser magnitude.[8]

As this Court stated in *Lassiter*, the effort to terminate a parent's relationship with his or her child encompasses an interest that cannot be compromised "absent a powerful countervailing interest." 452 U.S. at 27, *quoting, Stanley v. Illinois*, 405 U.S. 645, 651 (1972). In *Kras*, the Court noted that rights in areas such as marriage cannot be infringed upon without a "compelling governmental interest." 409 U.S. at 446. Here, the Mississippi government's minimal pecuniary interest in refusing even to consider in forma pauperis claims, such as the one made in this case, does not rise to the level of a rational interest, much less an interest that is "powerful" or "compelling."

Indeed, it is doubtful that Mississippi's $100 appeal filing

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[8] In fact, Mississippi, by statute, already allows for waiver of transcript fees and costs for indigents in the only other type of purely civil appeal that might involve interests comparable to those arising in a parental termination case -- civil commitment proceedings for mental illness. Miss. Code §§ 41-21-83 and 41-21-85. While the Mississippi Supreme Court has said that "any right to proceed in forma pauperis in other than a criminal case exists only at the trial level," *Moreno v. State*, 637 So.2d at 202, and "[t]he only exception . . . is an action for post-conviction relief," *id.*, that Court apparently did not consider the State statute regarding civil commitment appeals.

fee could stand in a case involving the fundamental interest of a parent's rights if a parent could not afford it. But here, the petitioner paid that. It was only when confronted with the $2,000 plus bill to be paid in advance that she was forced to ask for in forma pauperis status. The Mississippi Supreme Court's refusal even to consider her request is not supported by a sufficient governmental interest.

The fact that *Lassiter* does not require counsel in every parental termination case is of little importance here. Indeed, *Lassiter* does require a case-by-case determination of whether due process demands appointment of counsel in a given termination case, while the Mississippi Supreme Court's across-the-board rule on in forma pauperis appeals does not allow even that much.[9]

Moreover, it is clear that the right of access to courts is far broader than any right to counsel in those courts. As

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[9] The issue in *Lassiter* was whether "the Due Process Clause requires the appointment of counsel when *a State* seeks to terminate an indigent's parental status." 452 U.S. at 31 (emphasis added). While the presence of the State as an adversarial party and the resulting comparison of litigation resources may affect the analysis in a right to counsel case, it is not relevant to the issue here, where the termination was sought by private parties -- the petitioner's ex-husband and his new wife. The sanction imposed against the petitioner by the state trial judge -- the termination of her parental rights -- is the same sanction that would have been imposed had the State initiated the proceedings and prevailed in the trial court. The right to an appeal is available in Mississippi both to those whose parental rights were terminated in an action instituted by the State and to those who suffered this loss in a case instituted by a private party, and indigents are precluded from that appeal in both situations. Thus, the action of the Mississippi Supreme Court is subject to challenge here independent of whether the State or private parties instituted the proceeding. Further, as noted at page 16 of this brief, state appellate procedures are subject to challenge under the Fourteenth Amendment even in cases involving only private parties.

explained by then-Justice Rehnquist's opinion for this Court in *Ross v. Moffitt*, 417 U.S. 600 (1974), the *Griffin* line of cases involves the right of an indigent person to get his or her foot in the appellate courthouse door. According to the Court in *Ross*, those cases "stand for the proposition that a State cannot arbitrarily cut off appeal rights for indigents while leaving open avenues of appeal for more affluent persons." 417 U.S. at 607. This Court held in *Ross* that the Fourteenth Amendment does not require the provision of counsel for a discretionary second appeal within a state system or a petition for certiorari to this Court. In so doing, the Court specifically contrasted the basic sort of access to appellate courts represented by *Griffin* with the distinct line of right-to-counsel cases:

> The fact that an appeal *has* been provided does not automatically mean that a State then acts unfairly by refusing to provide counsel to indigent defendants at every stage of the way. . . . Unfairness results only if indigents are singled out by the State and denied *meaningful access* to the appellate system because of their poverty.

Id. at 611 (first emphasis in original, second emphasis added). Thus, added the Court in *Ross*:

> [The Fourteenth Amendment] does require that the state appellate system be "free of unreasoned distinctions," *Rinaldi v. Yeager*, 384 U.S. 305, 310 (1966), and that indigents have an adequate opportunity to present their claims fairly within the adversary system.

Id. at 612.

The point in *Ross* is confirmed by this Court's decisions illustrating that the right of access to appellate courts through

provision of a transcript to those who cannot afford it is far broader than any right to counsel. *Compare*, *Mayer v. City of Chicago* (transcript must be provided to indigent seeking to appeal a misdemeanor conviction with no sentence of imprisonment and only a $500 fine) with *Scott v. Illinois*, 440 U.S. 367 (1979) (no right to counsel for a misdemeanor offense that does not lead to imprisonment), and *Long v. District Court of Iowa*, 385 U.S. 192 (1966) (transcript of habeas corpus hearing must be provided to indigent seeking to appeal denial of habeas relief) with *Murray v. Giaratano*, 481 U.S. 551 (1987) (no right to counsel in a state habeas corpus action, even in death penalty cases).

Certainly, neither *Kras* nor *Ortwein* justifies the Mississippi Supreme Court's action in this case. As noted previously, both cases involved rather small fees -- $50 in *Kras* that could be paid in weekly installments as low as $1.28, and $25 in *Ortwein*. That is a far cry from the present case, where the petitioner did pay a $100 filing fee, but was stymied when the court system required her to pay an additional $2,352.36 in advance. Moreover, both *Kras* and *Ortwein* relied on the fact that the interests there were not comparable to the marriage interest at issue in *Boddie*, while the interest here is at least equivalent to, if not greater than, that in *Boddie*.

In light of all of this, it is clear that the judgment of the Mississippi Supreme Court violates the Fourteenth Amendment. It violates both the Equal Protection Clause, which emphasizes the disparity in treatment by a State among different individuals or classes of individuals, and it violates the Due Process Clause, which emphasizes an individual's fair treatment at the hands of the State. *See, Ross v. Moffitt*, 417 U.S. at 609; *Evitts v. Lucey*, 469 U.S. at 405. This Court's decisions over the years in the relevant cases generally have emphasized both clauses, although some cases focus on one

rather than the other. In terms of the Equal Protection Clause, the Mississippi Supreme Court has excluded some from an appeal involving fundamental rights, not on the basis of the merits of their case, but on the basis of their financial poverty, while allowing complete access for those who have enough money. *See, Griffin v. Illinois*, 351 U.S. at 18-20; *Mayer v. City of Chicago*, 404 U.S. at 193; *Lindsey v. Normet*, 405 U.S. at 77, 79; *Ross v. Moffitt*, 417 U.S. at 611. In terms of the Due Process Clause, the State Courts in Mississippi have treated the petitioner unfairly, as a procedural matter, by taking away her fundamental rights as a parent, while at the same time excluding her -- simply because she cannot pay a $2,000 plus bill in advance -- from the full panoply of safeguards erected by the State to insure an accurate and proper decision. *See, Griffin v. Illinois*, 351 U.S. at 18-20; *Mayer v. City of Chicago*, 404 U.S. at 193; *Boddie v. Connecticut*, 401 U.S. at 374; *Evitts v. Lucey*, 469 U.S. at 403-405; *Lassiter v. Department of Social Services*, 452 U.S. at 24, 32.

The petitioner's life has been turned upside down by the Chancery Court's order terminating her rights, and her existence, as a parent to her children. Quite justifiably, she believes that decision is terribly wrong and she would like to exercise the right granted by Mississippi law to appeal it -- the right to ask the Mississippi Supreme Court to restore her as a parent to her children. Under the principles of the Fourteenth Amendment, the Mississippi Supreme Court should be required to consider her claim that she cannot afford to pay over $2,000 as a pre-condition for exercising this right of appeal. Her status as a parent should not be controlled by how much money she has.

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, the judgment of the Supreme Court of Mississippi should be reversed and the case remanded for that Court to determine, based on the petitioner's financial condition, whether she can afford to pay the advance costs of $2,352.36, and if not, to permit her to appeal in forma pauperis the Chancery Court decision terminating her rights as a parent.

Respectfully Submitted,

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